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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/821,905 | 03/30/2001 | Russell F. McKnight | 2089 | 8934 |

24333 7590 02/26/2004

GATEWAY, INC.
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| EXAMINER |
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BAUTISTA, XIOMARA L

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| ART UNIT | PAPER NUMBER |
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2173

DATE MAILED: 02/26/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/821,905

Applicant(s)

MCKNIGHT ET AL.

Examiner

X L Bautista

Art Unit

2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2&3</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 2, 4, 7, 8, 10, 13-17, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by *Cluts* (US 5,616,876).**

Claims 1, 7, and 13:

Cluts discloses a system and method for selecting and playing audio selections (music) on the basis of subjective content (abstract; col. 1, lines 7-10). Cluts teaches tagging of pieces of media content in accordance with a user-defined classification (col. 2, lines 30-48; col. 3, lines 1-36; col. 15, lines 47-55); receiving a criteria set of desired media content; analyzing the tagged piece of media content to determined if it is in accordance with the criteria set (col. 11, lines 34-48; col. 14, lines 4-11); and compiling a collection of media content based upon the user-defined classification and criteria set (col. 13, lines 63-67; col. 15, lines 14-31).

Claims 2, 8, and 17:

Cluts teaches an audio file as media content (abstract; col. 4, lines 38-67).

Claims 4, 10, and 16:

Cluts teaches an input device for receiving input from the user (col. 3, lines 3-8).

Claim 14:

Cluts teaches multiple servers and storage mediums (col. 3, lines 1-17; col. 5, lines 1-18; col. 6, lines 38-65; col. 7, lines 14-18).

Claim 15:

Cluts teaches identifying means such as a tag and id (song id, artist id, etc.) that represent (uniquely identify) attributes of a piece of media content (col. 11, lines 34-46; col. 14, lines 1-11; col. 15, lines 14-25).

Claim 19:

Cluts teaches means for playing media content (fig. 1, 2; col. 6, lines 21-65).

Claim 20:

Cluts teaches a remote media content player (fig. 1, 2; col. 6, lines 21-65).

Claim 21:

See claim 20. Cluts teaches that the user can rate a piece of media content (col. 13, lines 63-67; col. 14, lines 1-11).

Claim 22:

See claims 1 and 21. See further: col. 2, lines 30-48; col. 3, lines 1-36;

col. 11, lines 34-48; col. 13, lines 63-67; col. 14, lines 1-11; col. 15, lines 14-31, 47-55.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 3, 9, 18, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cluts* and *Pitman et al* (US 6,574,594 B2).**

Claims 3, 9, 18, and 23:

Cluts does not teach that the audio file is in an MP3 format. However, Pitman discloses a system for monitoring audio content and for automatically identifying audio content (abstract; col. 1, lines 17-19). Pitman teaches tagging music and identifying music from digital source such as an MP3 file (col. 1, lines 50-56; col. 2, lines 5-12; col. 4, lines 1-5). Therefore, it would have been obvious to an artisan in the art at the time the invention was made to modify Cluts to include Pitman's teaching of audio files in MP3 format because it is the most popular audio-compression format on the Internet and it provides an efficient audio-

coding scheme, which allows compression of audio files with little loss in quality.

5. Claims 5, 6, 11, 12, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Cluts* and *R. W. Picard* (article entitled Affective Wearables, published in 1997).

Claims 5, 11, and 25:

Cluts does not teach that a physiological input including at least one of heart rate and motion detection. However, Picard discloses a wearable system (affective wearable) that enables recognition of its wearer's affective patterns (abstract). Picard teaches that a wearable computer can learn to recognize physical and physiological patterns, especially those, which correspond to affective states (fear, stress, relax). Picard teaches that the system monitors heart rate, blood pressure, etc., (page 90, left and right column). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Clut's interactive network to include Picard's teaching of a criteria set including a physiological input because as Picard says, the system gathers important information about the wearer that may used in affect analysis.

Claims 6, 12, 24, and 27:

Cluts does not teach a schedule input that is an activity planned and documented on a scheduling system. However, Picard teaches an affective

assistant agent that can intelligently filter the user's schedule, taking into account the the user's emotional state or degree of activity (page 91, right column, second paragraph). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to modify Clut's invention to include Picard's teaching of schedule input because the system plans activities based on the wearer's emotional or physical state.

Claim 26:

See claims 5 and 6. Picard teaches that the wearable system sets the criteria by analyzing affective states, environment, wearer's position, viewpoint, etc., (page 90, left and right column; page 91, left column-second paragraph; page 91, right column-first paragraph).

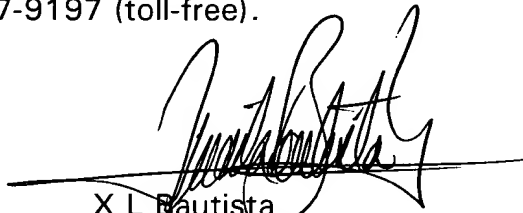
Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to X L Bautista whose telephone number is (703) 305-3921. The examiner can normally be reached on Monday-Thursday (8:00-18:00), Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W Cabeca can be reached on (703) 308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



X L Bautista
Patent Examiner
Art Unit 2173

xlb
February 20, 2004